

SEP 27 1984

ALEXANDER L. STEVAS

No. 84-142

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

UNITED STATES CURRENCY AMOUNTING TO THE SUM OF TWO
HUNDRED FIFTY THOUSAND DOLLARS [\$250,000.00] MORE
OR LESS,

Defendant,

and

THE STATE OF NEW YORK,

Defendant-Appellee,

and

REPUBLIC OF COLOMBIA,

Defendant-Appellee-Petitioner,

and

JOSE A. FONSECA,

Defendant-Appellant-Respondent.

RESPONDENT'S REPLY MEMORANDUM
(MOOTNESS)

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Jose A. Fonseca

September 26, 1984

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

UNITED STATES CURRENCY AMOUNTING TO THE SUM OF TWO
HUNDRED FIFTY THOUSAND DOLLARS [\$250,000.00] MORE
OR LESS,

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THE STATE OF NEW YORK,

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and

REPUBLIC OF COLOMBIA,

Defendant-Appellee-Petitioner,

and

JOSE A. FONSECA,

Defendant-Appellant-Respondent.

RESPONDENT'S REPLY MEMORANDUM
(MOOTNESS)

Respondent hereby responds to petitioner's Supplemental and Reply Brief dated September 18, 1984 (as corrected):

1. Contrary to petitioner's reckless assertion, the Solicitor General does *not* have "ample" or even *any* "interest" in this matter. By notice dated September 18, 1984, the Solicitor General *waived* the Government's right to respond to Colombia's petition, clearly signalling either or both the frivolousness of the petition or its mootness.

2. Colombia conveniently ignores its own *express concession of mootness* at ¶"6" of its unsuccessful September 7, 1984 stay application, to the effect that "if the money is turned over to

Fonseca's counsel, *the subject of the certiorari petition will have disappeared, and the rights of Colombia [will have been] defeated. . . .*" (Emphasis added.)

In light of the settlement of the mandamus action, respondent no longer has any legally cognizable interest in whether Colombia prevails on its interpleader claims against the Government. Accordingly, the case at bar presents a clear illustration of the situation which arises when, as a result of an intervening change of circumstances, there are no longer adverse parties with sufficient legal interest to maintain the litigation, thereby rendering the issues non-justiciable and moot. *County of Los Angeles v. Davis*, 440 U.S. 625 (1978); *Powell v. McCormack*, 395 U.S. 486 (1969); *Mills v. Green*, 159 U.S. 651 (1895).

As held over eighty-five years ago in *Mills v. Green*, *supra*, it is "the duty of this Court, as of every other judicial tribunal, . . . to decide actual controversies by a judgment which can be carried into effect, and not give opinions upon moot questions or abstract propositions or to declare principles or rules of law which cannot affect the matter in issue in the case before it." 159 U.S. at 653.

The case of *Levinson v. United States*, 258 U.S. 198 (1921), relied upon by petitioner, has never been recognized as an exception to the principles of mootness uniformly articulated by this Court over the years. Instead, *Levinson* has properly rested on its own peculiar facts, most importantly the circumstance that the interpled property was conveyed to the adverse claimant pursuant to the Order of the Court of Appeals reviewed by this Court, so that upon reversal of the intermediate appellate judgment this Court (and the lower courts) retained the power, in equity, to vacate and set aside mistaken acts done in conformity with the reversed Order.

Here, however, this is simply not the case. The Government has turned the disputed funds over to petitioner in settlement of the mandamus action. This action, *Fonseca v. Regan*, No. 78 Civ. 1907 (E.D.N.Y.), is *not* before this Court, the time for Colombia to seek certiorari with respect to the Court of

Appeals Order in the mandamus action has *expired*, and a reversal of the Court of Appeals Order in the interpleader action would have absolutely *no effect* on the settlement and voluntary dismissal of the separate, non-consolidated mandamus action between respondent and the Government.

There thus clearly no longer exists any case or controversy for this Court to adjudicate. Accordingly, the jurisdiction of this Court to entertain Colombia's petition has ceased and the petition should be dismissed (or denied) as *moot*.

Respectfully submitted,

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September 26, 1984